Washington and Lee Law Review

Volume 20 | Issue 1 Article 10

Spring 3-1-1963

Collateral Estoppel in Successive'Criminal and Civil Actions

to ignore words in the will as the majority has done. Nor would there have been a real hardship inflicted upon the express legatees. Herbert's widow would still have been entitled to receive the same income she would have received if Herbert had died with children surviving him. And, upon her death the educational institutions would have been enentitled to receive the same part of the corpus they would have gotten if Herbert had been survived by children.

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COLLATERAL ESTOPPEL IN SUCCESSIVE CRIMINAL AND CIVIL ACTIONS

The question of the admissibility of the criminal judgment of conviction in a succeeding civil action has been frequently considered,[1] but it is still unsettled as is evident in the recent California case of *Teitelbaum Furs, Inc. v. Dominion Ins. Co.*[2]

Teitelbaum is an action by a corporation against an insurance company to recover the value of furs allegedly stolen from the plaintiff's store. A prior criminal proceeding[3] established that the president of the corporation had conspired to commit grand theft and to present and file false insurance claims. The president was convicted. The corporation later instituted this civil action to recover the insurance for the alleged theft. The defendant denied that any theft had occurred and sought to use the prior judgment of conviction as a bar to the civil action. Judgment was entered for the plaintiff, and the defendant appealed.[4] The district court of appeals held that the prior judgment of conviction was inadmissible as a bar to the succeeding civil action, but that it was admissible for the purpose of impeachment. In a vigorous dissenting opinion, one judge said that there had been a con-

[1]See 40 Calif. L. Rev. 225 (1952); and the following annotations; 18 A.L.R.2d 1287 (1951); 130 A.L.R. 690 (1941); 80 A.L.R. 1145 (1932); 57 A.L.R. 504 (1928); 31 A.L.R. (1924).

[2]203 Cal. App. 2d 589, 21 Cal. Rptr. 671 (Dist. Ct. App. 1962).

[3]People v. Teitelbaum, 163 Cal. App. 2d 184, 329 P.2d 157 (Dist. Ct. App.), cert. denied, 359 U.S. 206 (1958).

[4]The trial court granted the defendant a new trial after the plaintiff obtained a jury verdict in the superior court. The new trial was granted on the ground that the evidence was insufficient to justify the verdict and also upon the ground that the plaintiff's attorney prevented the defendant from having a fair trial due to irregular proceedings on the part of plaintiff's counsel. The plaintiff appealed from this order granting a new trial. The defendant filed a cross appeal from the jury verdict in favor of the plaintiffs.

clusive adjudication in the criminal proceeding of the basic facts involved, and hence, the criminal judgment of conviction should be admitted to bar the present civil action.

Applying the standard definitions,[5] it appears that the question presented in *Teitelbaum* is technically neither one of res judicata nor collateral estoppel. The judgment in the criminal case is not res judicata since there are different causes of action, *i.e.*, the first case was criminal and the second civil, and also the parties are different. The judgment is not technically an estoppel because of the lack of mutuality, the insurance company not being a party to the criminal action.[6]

Basically, there are two views as to the admissibility of a criminal judgment of conviction in a succeeding civil action.[7] The majority holds that a prior judgment of conviction is not admissible in a subsequent civil action as evidence of the facts on which it was based.[8] Under the modern trend, still the minority rule, the general exclusionary rule has been abandoned. The prior conviction is admissible as evidence of the facts on which it was based as a bar to the subsequent civil action.[9] There is a difference of opinion, however, as to

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[5]Res judicata and collateral estoppel may be broadly defined as judicial rules which operate to prevent redetermination of an issue already litigated between the same parties in a previous action; however, the terms are not synonymous. Res judicata, in its narrow interpretation, applies when a second suit on the same cause of action arises between the same parties or their privies. It precludes the relitigation of all issues that were raised or might have been raised by the parties in the former action. Collateral estoppel operates to prevent relitigation of issues which were actually litigated between the same parties or their privies though the former suit concerned a different cause of action. Cromwell v. County of Sac. 94 U.S. 351 (1876).

[6]Eagle, Star and British Dominions Ins. Co. v. Heller, 149 Va. 82, 104, 140 S.E. 314, 321 (1927).

[7]Some states by statute expressly exclude prior criminal convictions in subsequent civil actions. Minn. Stat § 169.94 (1949).

Under the antitrust laws, a judgment of conviction is admissible against a defendant in a subsequent treble-damage action which emanates from the antitrust violation. 38 Stat. 731 (1914) as amended, 15 U.S.C. § 16 (1955), Emich Motors Corp. v. General Motors Corp., 340 U.S. 558 (1951).

[8]Burbank v. McIntyre, 135 Cal. App. 482, 27 P.2d 400 (Dist. Ct. App. 1933); McKenna v. Whipple, 97 Conn. 695, 118 Atl. 40 (1922); Metropolitan Life Ins. Co. v. Hand, 25 Ga. App. 90, 102 S.E. 647 (1920); Dimmick v. Follis, 123 Ind. App. 701, 111 N.E.2d 486; Skelbar v. Downey, 220 Mo. App. 5, 285 S.W. 148 (1926); Scjeharie County Cooperative Daries v. Eisenstein, 22 N.J. Super. 503, 92 A.2d 390 (Sup. Ct. 1952); Interstate Dry Goods Stores v. Williamson, 91 W. Va. 156, 112 S.E. 301 (1922).

[9]Connecticut Fire Ins. Co. v. Ferrar, 227 F.2d 388 (8th Cir. 1960); United States v. Guzzone, 273 F.2d 121 (2nd Cir. 1959); Austin v. United States, 125 F.2d 816 (7th Cir. 1942); O'Neill v. United States, 198 F.2d 367 (E.D.N.Y. 1961); United States

the weight to be given to the prior judgment. Where the criminal defendant is the plaintiff in the civil action, the federal courts generally hold that the judgment is conclusive.[10] Some states hold that the judgment of conviction is only prima facie evidence to be submitted to the jury.[11]

Essentially four arguments are advanced in support of the majority rule excluding the admission of the judgment. One argument frequently advanced in older cases is that mutuality of estoppel does not exist among the parties.[12] Mutuality exists only when the party seeking to estop another would likewise be bound if the former judgment had been adverse to his interests.[13]

The argument most often used is that there is no identity of parties or their privies[14] in the criminal and civil actions.[15] This argument arises since the parties to the former action are the state and the defendant, whereas in the latter action the contest is between private parties.

A third argument made in support of the majority is that the different procedural rules in civil and criminal actions should preclude

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v. Ben Grunstein & Sons Co., 127 F. Supp. 907 (D.C.N.J. 1955); United States v. Bower, 95 F. Supp. 19 (E.D. Tenn. 1961); Approximately 50 Gaming Devices v. People ex rel. Burke, 110 Colo. 82, 130 P.2d 920 (1942); Greenwell's Adm'r v. Burba, 298 Ky. 255, 182 S.W.2d 436 (1944); Schindler v. Royal Ins. Co., 258 N.Y. 310, 179 N.E. 711 (1932); Eagle, Starr and British Dominions Ins. Co. v. Heller, 149 Va. 82, 140 S.E. 314 (1927).

[10]Connecticut Fire Ins. Co. v. Ferrara, 227 F.2d 388 (8th Cir. 1960); United States v. Grabling, 180 F.2d 498 (5th Cir. 1950); Austin v. United States, 125 F.2d 816 (7th Cir. 1942); O'Neill v. United States, 198 F. Supp. 367, 369 (E.D.N.Y. 1961); United States v. Ben Grunstein & Sons Co., 127 F. Supp. 907 (D.C.N.J. 1955); United States v. Bower, 95 F. Supp. 19 (E.D. Tenn. 1951).

[11]Fidelity Phoenix Fire Ins. Co. v. Murphy, 226 Ala. 226, 126 So. 387 (1933); North River Ins. Co. v. Militello, 100 Colo. 343, 67 P.2d 625 (1937); Wolff v. Employer Fire Ins. Co., 282 Ky. 824, 140 S.W.2d 640 (1940); Schindler v. Royal Ins. Co. 258 N.Y. 310, 179 N.E. 711 (1932).

[12]Chamberlain v. Pierson, 87 Fed. 420 (4th Cir. 1898); Young v. Copple, 52 Ill. App. 547 (1894); Rosenberg v. Salvatore, 1 N.Y. Supp. 326 (City Ct., Spec. Term 1888); Henaker v. Howe, 60 Va. (19 Gratt.) 50 (1869).

[13]Brooklyn City & N.R. v. National Bank, 102 U.S. 14 (1880); Adriaanse v. United States, 184 Fed.2d 968 (2d Cir. 1950).

[14]Under the term "parties," the law includes all who are directly interested in the subject matter, and had a right to make a defense, or to control the proceedings and to appeal from the judgment. Privity depends upon the relation of the parties to the subject matter rather than their activity in a suit relating to the later civil proceedings. Biglow v. Old Dominion Copper N. & S. Co., 225 U.S. 111 (1912); Fish v. Vanderlip, 28 N.Y. 29, 112 N.E. 425 (1961); Restatement, Judgments § 83, comment a (1942).

[15]Harper v. Blase, 112 Colo. 518, 151 P.2d 760 (1944); Corbley v. Wilson, 71 Ill. 209 (1874); Interstate Dry Goods Stores v. Williamson, 91 W. Va. 156, 112 S.E. 301 (1932).

any binding effect of one upon the other.[16] An example of this is the privilege of the accused in a criminal action to refuse to testify as opposed to the absence of such a privilege in a civil action.

A fourth argument often encountered is that the issues in question were not the ultimate issues of the criminal action. An ultimate issue is defined as one which is material, relevant and necessary to a decision of the case on its merits. It is an issue which relates to the substantive law of the criminal action.[17]

A leading case which supports the majority rule is the West Virginia decision in *Interstate Dry Good Stores v. Williamson.*[18] The plaintiff brought this civil action to recover the value *of* goods allegedly stolen from his store by the defendant. In a previous criminal action the defendant had been convicted of burglarizing the plaintiff's store. The issue presented was whether a judgment rendered in a criminal trial could be used as evidence in a civil suit to prove that the defendant had in fact stolen the goods from the plaintiff's store. The trial court held that the judgment of conviction was inadmissible in a subsequent civil action to establish that the defendant had stolen the goods. In affirming the decision of the lower court, the Supreme Court of Appeals said:

> "It is uniformly held that a judgment of conviction . . . is not proper evidence in a civil case. . . . The parties to the criminal prosecution are different. The rules are different . . . and the purposes and objects sought to be accomplished are essentially different. . . . In a criminal case, the guilt of the accused must be proven beyond a reasonable doubt, while this is not the rule in civil trials. The criminal proceeding is between the state and the accused party, and seeks the vindication of a public right while in a civil suit the purpose sought is vindication of purely private rights and interests."[19]

The Virginia case of *Eagle, Star and British Dominion Ins. Co. v. Heller*[20] is a leading case which discusses the minority view.[21] This was

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[16]Myers v. Maryland Cas. Co., 123 Mo. App. 682, 101 S.W. 124 (1907); Fenville v. Atlanta & C. Air Line R.R., 93 S.C. 287, 95 S.E. 172 (1912); Interstate Dry Goods Stores v. Williamson, 91 W. Va. 156, 112 S.E. 301 (1922); 2 Freeman, Judgments § 654 (5th ed. 1925).

[17]Frank v. Mangum, 237 U.S. 309, 334 (1915); The Evergreens v. Nunan, 141 F.2d 927 (2d Cir. 1944).

[18]91 W. Va. 156, 112 S.E. 301 (1922).

[19]91 W. Va. at 159, 112 S.E. at 302.

[20]149 Va. 82, 140 S.E. 314 (1927).

[21]A more recent opinion which cites Eagle and analyzes the question of the admissibility of the judgment of conviction is Connecticut Fire Ins. Co. v. Ferrara, 227 F.2d 388 (8th Cir. 1960).

a civil action similar to the *Teitlebaum* problem wherein the insured plaintiff sought to recover on a fire insurance policy from the defendant insurance company. In a former criminal action,[22] the plaintiff had been convicted of wilfully burning his home with intent to injure the insurer. In the subsequent civil action, the defendant filed both a plea of res judicata and collateral estoppel, but the trial court rejected both defenses and held for the plaintiff. The highest court of Virginia reversed and held that the former conviction was conclusive upon the plaintiff and a bar to the civil action. The court said:

> "The rule of exclusion is a shield for the protection of those who have had no opportunity to assert their defense. To apply it here would be to convert it into a sword in the hands of one who has had such an opportunity, to be used by him for the effectuation of the same fraud which had been established, condemned, and punished in the criminal case. If there be a rule which cannot stand the rule of reason, it is a bad rule."[23]

The rules relating to the admissibility of the judgment of conviction are further complicated by the numerous exceptions[24] recognized by both majority and minority jurisdictions.

The one exception generally recognized by courts adhering to the majority rule arises where the record of a plea of guilty to a criminal charge is offered as evidence in civil action: the plea will be admitted as a declaration against interest.[25] This exception is limited to the plea itself and does little to remedy the problem in *Teitelbaum*.

Numerous exceptions arise under the minority rule. The judgment is not admissible when the trial resulted in an acquittal, which merely shows that the necessary burden of proof was not carried.[26] The judgment is inadmissible when the conviction is pending appeal since the finality of the conviction is still in question.[27] In many states,

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[22]Heller v. Commonwealth, 137 Va. 782, 119 S.E. 69 (1923).

[23]149 Va. 82, 106, 140 S.E. 314, 321 (1927).

[24]See Restatement, Judgments, Chapter 4 (1942).

[25]Risdon v. Yates, 145 Cal. 210, 78 Pac. 641 (1904); Galvin v. Terres, 8 Ill. App. 2d 227, 131 N.E.2d 367 (1956); Interstate Dry Goods Stores v. Williamson, 91 W. Va. 156, 112 S.E. 301 (1922). See A.L.R. annotations cited in note 1 supra for further cases.

[26]United States v. National Ass'n of Real Estate Boards, 339 U.S. 485 (1950); Stone v. United States, 167 U.S. 178 (1897); United States v. Bush, 294 F.2d 1 (5th Cir. 1961); Schindler v. Royal Ins. Co., 258 N.Y. 310, 179 N.E. 711 (1932); Eagle, Star and British Dominions Ins. Co. v. Heller, 149 Va. 82, 140 S.E. 314 (1927) (dictum).

[27]Twin Ports Oil Co. v. Pure Oil Co., 26 F. Supp. 366 (D. Minn. 1939); Pendleton v. Norfolk & W.R.R., 82 W. Va. 270, 95 S.E. 941 (1918); Marshak v. City of Long Beach, 195 Misc. 125, 91 N.Y.S.2d 74 (Sup. Ct. 1948).

conviction of a minor offense, such as a traffic violation, is not admissible when offered in the subsequent civil action.[28]

A comparison of the two leading cases will show that in *Interstate,* the criminal defendant was the defendant in the subsequent civil action; whereas in *Eagle,* the criminal defendant was the plaintiff in the subsequent civil action. It is submitted that the procedural difference in the two cases reveals the basic weakness of the exclusionary rule, for in *Eagle* the criminal defendant is affirmatively attacking the judgment of conviction and is activily seeking to benefit from the crime he committed. In *Interstate,* the criminal defendant is merely defending the issue raised by a third party to the criminal action. This basic flaw of strict adherence to the majority rule is clearly manifested by the factual situation presented in *Teitelbaum; i.e.,* where the subsequent civil action is commenced by the criminal defendant for the purpose of profiting from his criminal conduct. To immunize such a party from the effects of his former conviction should be held to be against public policy,[29] for it is a basic principle of American jurisprudence that one may not profit from his own crime.[30] Certainly no injustice would befall the criminal defendant, for he had his day in court with the opportunity to produce his witnesses and to appeal from a judgment of conviction, which will not be upheld unless the evidence establishes guilt beyond a reasonable doubt.

The problem is not resolved by the suggestion in the majority opinion of *Teitelbaum,* that the criminal conviction may be shown for purposes of impeachment, since impeachment material has no probative value.[31] Neither is the problem resolved by admitting the former conviction as a declaration against interest, since that rule is applicable only when the accused has entered a plea of guilty.[32]

In conclusion, it is submitted that a distinction must be made when

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[28]Arkansas specifically excludes the admissibility of minor traffic violations by statute. Ark. Stat. Ann. § 75-1011 (Supp. 1961). [Garver v. Utyesonich, 356 S.W.2d 744 (Ark. 1962)].

New York excludes convictions of minor traffic violations by judicial decision. Alther v. News Syndicate Co., 276 App. Div. 169, 93 N.Y.S.2d 537 (1949). See also Smith v. Goodwin, 103 Ga. App. 248, 119 S.E.2d 35 (1961); Forney v. Morrison, 144 W. Va. 746, 110 S.E.2d 840 (1959).

[29]Mineo v. Eureka Security Fire & Marine Ins. Co., 182 Pa. Super. 75, 125 A.2d 612, 617 (1956).

[30]New York Mut. Life Ins. Co. v. Armstrong, 117 U.S. 591, 600 (1886); Connecticut Fire Ins. Co. v. Ferrara, 227 F.2d 388 (8th Cir. 1961); Grose v. Holland, 357 Mo. 874, 211 S.W.2d 464, 466 (1948).

[31]See cases collected in 3 Wigmore, Evidence § 1018, Annot. 133 A.L.R. 1454 (1941).

[32]See note 25 supra.